IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

SANWALA RAM VERSUS STATE OF RAJASTHAN

S.B.CRIMINAL APPEAL NO.1090/2006

UNDER SECTION 454 CR.P.C. REAQD WITH SECTION 51 OF THE NDPS ACT AGAINST THE JUDGMENT AND ORDER DATED 6.12.2006 PASSED BY THE SPECIAL JUDGE NDPS CASES JODHPUR IN CR.MISC. CASE NO.141/2005 IN THE PROCEEDINGS UNDER SECTIONS 60-63 NDPS ACT.

DATE OF JUDGMENT :- 14.3.2007

PRESENT

HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr.L.D.Khatri, counsel for the appellant.

Mr.J.P.S.Choudhary, Public Prosecutor.

BY THE COURT :-

This appeal is directed against the Judgment and order of the learned Special Judge NDPS cases,Jodhpur, dated 6.12.06 whereby he rejected the application under Sections 60-63 of the NDPS Act.

Learned counsel for the appellant contended that the

learned Special Judge, NDPS Cases,Jodhpur, confiscated the Motor cycle No. AP.02-D/ 2502 vide ex parte impugned order dated 6.12.06. As per affidavit of learned counsel for the appellant Shri L.D.Khatri, the case was adjourned from 9.11.06 to 15.12.06 but instead of giving opportunity to lead evidence to the appellant and case was decided by the learned Special Court on 6.12.06 which is without any kind of cogent reason and evidence, therefore, impugned order deserves to be quashed and set aside and case should be remanded back to the Special Court for deciding afresh according to the provisions of law.

Learned Public Prosecutor could not oppose the appeal because of the peculiar facts and only states that if the case is remanded back for taking evidence and case is decided afresh in accordance with law then that will be a just and proper order.

After going through the submissions and taking into consideration affidavit of Shri L.D.Khatri, Advocate, and looking to the order sheet dated 5.12.06 in which the appellant is shown absent. In the interest of justice, it is just and proper that matter may be decided after evidence and, thus, the learned Special Court's order cannot be sustained and it should be quashed and set aside and case should be remanded for afresh decision.

In the result, this appeal is allowed. The judgment of the learned Special Judge,N.D.P.S.Cases Jodhpur dated 6.12.06 is quashed and set aside. The case is remanded back to the learned Special Judge, N.D.P.S.Cases, Jodhpur for deciding afresh after giving opportunity of evidence to the appellant. Record of the case be sent forthwith. Appellant is directed to appear before the learned Special Judge, N.D.P.S.Cases, Jodhpur, on 19.4.2007. Copy of this order may also be sent along with the record of the case.

(CHATRA RAM JAT)J.

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